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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,755	06/04/2001	Maurice Clarence Kemp	MORN-0010 (108347.00021)	2361
25555	7590	01/02/2004	EXAMINER	
CHOI, FRANK I				
ART UNIT			PAPER NUMBER	
1616				

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/873,755

Applicant(s)

KEMP ET AL.

Examiner

Frank I Choi

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

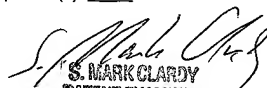
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


S. MARK CLARDY
PATENT EXAMINER
GROUP 4200 1616

Continuation of 3. Applicant's reply has overcome the following rejection(s): 102(b)/103(a) inherency rejection of claims 60-62,64 by Schwank (US Pat. 5,087,467).

Continuation of 5. does NOT place the application in condition for allowance because: Examiner has duly considered Applicant's arguments but deems them unpersuasive for the reasons set forth in the prior Office Actions and the further reasons below. Scope of enablement of claims 1-59, 65-96. Examiner reminds Applicant that the arguments of counsel do not constitute evidence supporting enablement. See. In re Schulze, 602, 145 USPQ 716, 718 (CCPA 1965); In re Knowlton, 183 USPQ at 37; In re Wiseman, 201 USPQ 65 (CCPA 1979). Applicant argues that Applicant's AGIIS is prepared by mixing as indicated on page 16 of the remarks, however, neither the Specification or claims 1,4-18, 25,28-42, 65,68-84 appear to require the same in that said claims broadly claim AGIIS and the specification indicates that there are several ways that it can be prepared and the method in set forth in the remarks is the preferred method (it does not indicate that it is the required method). Applicant has not shown or provided evidence that all of the Group IIA metals would act the same as calcium or that one of ordinary skill in the art would recognize which components would be soluble, slightly soluble or insoluble. Further, Applicant admits that the exact composition of the final product is unknown, as such, one of ordinary skill in the art would be required to do undue experimentation in order to determine whether the mixture of components would have the same properties as the claimed invention.

Rejection of claims 60, 62, 64 by Schwank in view of Roden et al. Applicant argues that Schwank does not teach or suggest Applicant's composition containing sulfuric acid, salt of phosphoric acid and an organic acid or a nutrient material with the acidic composition absorbed or adsorbed. However, there is no requirement that the claimed invention be expressly disclosed in any one or all of the references. Applicant argues that the acidic compositions of Claims 60-64 contains metal ions which must not be chelated by the organic acids. However, the claimed invention contains the same or similar acids and the Specification makes no mention of not using organic acids which have chelating properties. Further, Applicant has provided no evidence showing that use of the organic acids would destroy the activity of the acidic composition. Assuming that such is the case, then Applicant's own invention would not be fully enabled as it contains organic acids which are known to act as chelators and, thus, would destroy the activity of the claimed invention. Applicant argues that the motivation of Applicant was different than Roden, however, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. In re Linter, 173 USPQ 560 (CCPA 1972); In re Dillon, 16 USPQ2d 1897 (Fed. Cir. 1990).

Rejection of claims 1,2,4-15,17-38,40-60, 62,64-79,81-96 by Schwank in view of Roden et al. and Wurzbarger et al. Applicant arguments relative to Schwank and Roden et al. are deemed unpersuasive for the same reasons as above. Applicant argues that Wurzbarger does not disclose AGIIS because the amounts of acid and base mixed to prepare AGIIS are not equimolar. However, the claims do not indicate that the amounts of acid and base are not equimolar. If this is an essential element of the claimed invention, then all pending claims would be rejectable under 35 USC 112, 2nd paragraph for failing to state the claimed invention. Applicant argues that Wurzbarger does not teach the use of a salt of phosphoric acid, however, as indicated above, there is no requirement that any one or all of the references expressly suggest the claimed invention. Contrary to Applicant's arguments, the rejection of the claims are not based on the picking and choosing from any one reference to the exclusion of the other part. The rinsing aspect of Schwank has not been shown to make the claimed invention unobvious, the rejection specifically mentions that the organic acids in Roden are chelators, the claims do not indicate that the mixture of components are not equimolar (Wurzbarger). With respect to the disclosure of using an acid and metal hydroxide and adding the use of phosphoric acid the prior art teaches and suggests the combination as indicated above and in the prior Office Actions.